

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company	:	
(Ameritech Illinois) and Illinois	:	
Telephone Company	:	
	:	
Joint Petition for Approval of the	:	02-0436
First Amendment to the Resale	:	
Agreement dated April 1, 2002,	:	
pursuant to 47 U.S.C. §252(a)(1)	:	
and 252(e).	:	

**ORDER**

By the Commission:

**Procedural History**

In this proceeding, Illinois Bell Telephone Company ("Ameritech") and Illinois Telephone Company ("ITC") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of the First Amendment (hereafter "First Amendment"), dated April 1, 2002, to an underlying negotiated resale agreement ("Resale Agreement" or "Agreement") pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq. A copy of the Amendment was filed with the joint petition, as was a statement in support of the joint petition from Eric Larsen, "Director-Local Negotiations for Southwestern Bell Telephone Company, LP, d/b/a Southwestern Bell Telephone Company /Illinois Bell Telephone Company Negotiations and Interconnections."

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois on July 16, 2002. Appearances were entered by respective counsel on behalf of Ameritech and the Commission Staff ("Staff"). The Verified Statement of Christopher L. Graves, a Policy Analyst in the Commission's Telecommunication's Division, was admitted into the record. In his Verified Statement, Mr. Graves recommended approval of the First Amendment to the Agreement, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

**Section 252 of the Telecommunications Act of 1996**

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

### **Purpose and Terms of the Amendment to the Agreement**

The First Amendment, dated April 1, 2002, amends the existing Agreement between Ameritech and ITC by adding provisions relating to Illinois Resource Credits.

This Amendment does not modify or extend the Effective Date or Term of the underlying Agreement, but rather, is coterminous with the underlying Agreement. Except as modified in the Amendment, all other terms and conditions of the underlying Agreement shall remain unchanged and in full force and effect, and such terms are incorporated by reference and the parties reaffirm the terms and provisions thereof.

### **Staff Recommendation**

Staff reviewed the Amendment to the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a

telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement as amended. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and Ameritech for termination on each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by ITC. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract, this Agreement should not be deemed discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement as amended on the basis of economic efficiency, equity, past Commission orders and state and federal law. In prior dockets, Staff has taken the position that negotiated agreements should be considered economically efficient if all the services in the agreement are priced at or above their respective long run service incremental costs ("LRSICs"). Staff states that in the instant docket, "the Agreement itself does not contain any prices but points to Ameritech's tariff." According to Staff, "the prices in the tariff will be monitored by Staff to ensure that all rates are above LRSIC; [t]herefore, the agreement should not be considered economically inefficient." Staff also states that nothing in the Agreement is inequitable, inconsistent with past Commission orders, or in violation of state or federal law.

Staff concluded, and the Commission agrees, that the Agreement should be approved subject to Staff's recommendations regarding implementation.

With respect to implementation of the Agreement, Staff recommended that the Commission require Ameritech to modify its tariffs, within five days from the date the Agreement is approved, to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of Ameritech's tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require Ameritech to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's

recommendations regarding implementation of the Agreement are reasonable and should be adopted.

### **Findings and Ordering Paragraphs**

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Ameritech and ITC are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which provide telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Agreement as amended does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement as amended inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (5) in order to assure that the implementation of the Agreement as amended is in the public interest, Ameritech should implement the Amendment by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Amendment to the Agreement is the same as the Amendment filed in this docket with the verified joint petition; the Chief Clerk should place the Amendment on the Commission's web site under "Interconnection Agreements";
- (6) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Amendment to the Agreement in the manner described in the prefatory portion of this Order above;
- (7) the First Amendment to the Agreement should be approved as hereinafter set forth;
- (8) approval of this Amendment to the Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the First Amendment, dated April 1, 2002, to the underlying Agreement between Ameritech and ITC, is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with Findings (5) and (6) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 11th day of September, 2002.

(SIGNED) KEVIN K. WRIGHT

Chairman